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In re Patent No. 7,674,953
Issued: March 9, 2010
Application No. 10/551,699
Filed: November 21, 2005
Attorney Docket No. BJS-4982-4

: **OFFICE OF PETITIONS**
: **DECISION ON REQUEST**
: **FOR RECONSIDERATION**
: **OF PATENT TERM ADJUSTMENT**

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(d)", filed May 3, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to twenty-eight (28) days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is being considered in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Applicant argues that the period pursuant to 37 C.F.R. § 1.702(b) should be 28 days and thus the patent term adjustment should be at least 28 days.

Applicant's arguments have been considered, but not found to be persuasive.

The period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 170 days calculated from November 21, 2005, the 371 completion date. The delay pursuant to 37 CFR 1.702(b) is 25 days based on a national stage commencement date under 35 U.S.C. 371(f) of October 3, 2005, not September 30, 2005. October 1, 2005 was a Saturday, therefore commencement occurs on the next business day. Accordingly, the "B" delay period, the over three year period begins on October 3, 2008, the date the national stage commenced under 35 U.S.C. 371(f), and ends on October 28, 2008, the day before the RCE was filed. As such, the patent term adjustment of zero (0) days (170 "A delay days" plus 25 "B delay days" minus 269 "Applicant delay days"), as indicated in the patent, is properly reflected.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

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